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No. 362

IN THE

SUPREME COURT

OF THE

United States

October Term, 1950

SECURITY-FIRST NATIONAL BANK OF LOS ANGELES (a national banking association),
Petitioner,

vs.

COUNTY OF LOS ANGELES, a body corporate and politic; and City of Vernon, a municipal corporation,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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In the
Supreme Court of the United States
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SECURITY-FIRST NATIONAL BANK OF LOS ANGELES (a national banking association), *Petitioner,* vs. COUNTY OF LOS ANGELES, a body corporate and politic; and City of Vernon, a municipal corporation, *Respondents.*	No. 362

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

OPINION BELOW

The opinion of the Supreme Court of the State of California herein (R. 124) is reported in 35 Advance California Reports 348, 217 P. 2d 946. No opinion was rendered on denial of rehearing. (R. 177.)

JURISDICTION

The petition herein invokes the jurisdiction of this Court under 28 U. S. C. 1257 (3) and 2101 (c). Those provisions do not afford jurisdiction, for the reason

that the decision of the Supreme Court of California did not pass upon the validity of any statute, and, except for one claimed Federal right unseasonably raised by petition for rehearing, there was not drawn in question by the decision any Federal right, title, privilege, or immunity.

In the Supreme Court of California, petitioner did assert Federal questions similar to those involved in the twenty-three companion cases decided on the same day (R. 127-141) (*Simms, et al., v. County of Los Angeles,* 35 Advance California Reports 332, 217 P. 2d 936). Such questions so raised, however, were not passed on or decided. Instead, the decision was based upon the adequate non-Federal ground that recovery was barred for failure of petitioner to exhaust its available administrative remedies. (R. 126.) Petitioner's contention herein that this ground of decision constituted a denial of Due Process of law was admittedly urged for the first time in petition for rehearing in the California Supreme Court. (Pet. 17.) Such rule of exhaustion of remedies is in complete accord with long-settled California law, and its application to bar relief herein should have been anticipated, and in fact was anticipated, by petitioner, prior to decision. The asserted denial of Due Process thus came too late to afford jurisdiction of this Court; and in any event, such claim is so demonstrably devoid of merit as to negative the existence of a substantial federal question.

QUESTION PRESENTED

Although the facts giving rise to this action were basically the same as in certain companion cases wherein also petitioner was plaintiff (*Security-First National Bank v. County of Los Angeles,* California Supreme Court docket numbers L. A. 20967, 20971, 20975, 20979, and 20983, 35 Advance Cal. Rep. 332, 217 P. 2d 936 (R. 127-141)), the ground of decision was entirely different. Accordingly, the sole question, but not timely raised,* is:

1. May a state court, consistently with the Due Process Clause, refuse judgment for recovery of taxes upon property discriminatorily overvalued in violation of R. S. 5219 and the Equal Protection Clause, upon the ground of found failure of the taxpayer to pursue the available and adequate remedy for equalization of such assessment?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Involved herein are the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States; Rev. Stats., sec. 5219 (12 U. S. C. 548); and sections 104, 105, 1605, 1607, and 1611 of the California Revenue and Taxation Code.

*This jurisdictional defect will be discussed in the second point of the Argument herein.

STATEMENT OF THE CASE

Petitioner national bank brought this action to recover 1941 taxes paid under protest upon a building owned and occupied by it for banking purposes (R. 1), the assessment of which was overvalued as compared with other building assessments in Los Angeles County. (R. 48-49.) Petitioner did not apply to the County Board of Equalization for equalization of its assessment prior to institution of the refund action. (R. 78, 124.) The California Supreme Court held that petitioner was thereby precluded from maintaining the action. (R. 124.)

The disproportionate valuation of petitioner's building assessment resulted from the fact that in 1941 certain fixtures owned by petitioner and installed in the banking premises of its building, were classified as improvements and included in the valuation placed upon petitioner's building assessment. (R. 48.) It was held in the twenty-three companion cases (*Simms, et al., v. County of Los Angeles,* 35 Advance California Reports 332, 337-338, 217 P. 2d 936) (R. 130, 131), that such classification of such property was correct and in strict accordance with the statutes and decisions of California. However, contrary to State law (R. 130), the assessor in Los Angeles County, in arriving at the values of other buildings, failed to consider the enhancement in value resulting from fixtures but assessed them separately as personal property. (R. 49.) Although the buildings of all were properly entered on the assess-

ment roll, described as "improvements" and assessed as real property (R. 19, 48, 49), such differences in valuation practice resulted in petitioner's building assessment being valued higher than the other undervalued building assessments in the county. (R. 48.) Other nonbank property owners, however, were taxed upon all personal property (including such fixtures misclassified as personal property) at the same rates and proportion of value as upon real property, except for special assessments which were levied on real property only. (R. 132.) As a result, petitioner's building bore a discriminatory tax *burden* only as to a portion of the special assessment levies thereon which the buildings of other property owners escaped due to misclassification of their fixtures as personalty. (R. 137.)

ARGUMENT

A basic fallacy underlies the petition. Its premise is that petitioner's fixtures were "exempt" from State taxation, and that application to the Board of Equalization was thus unnecessary under settled State practice. Such fixtures, however, were not exempt. They were improvements and thus taxable real property.

Petitioner's right to relief was based on overvaluation of its taxable property, and under state law in such cases, application for reduction of the overvalued assessment by the Board of Equalization is prerequisite to relief in the courts. Such is the long and well-established state rule of procedure in California. As-

serted denial of Due Process in applying it to bar relief herein was not seasonably urged, and does not constitute a substantial question.

I.

The Judgment Below Is Based Upon An Adequate Independent State Ground, To Wit, The Failure To Pursue The Available Administrative Remedy.

The decision of the Supreme Court of California herein is expressly based solely upon petitioner's found failure (R. 60, 124) to pursue the available prerequisite statutory remedy, to wit, application to the county board of equalization for reduction of the assertedly erroneous assessment. (R. 124-126.) It is purely a decision of State law which does not raise any Federal question. *Mellon Co. v. McCafferty,* 239 U. S. 134, 136; *Northern Pacific Railroad Co. v. Patterson,* 154 U. S. 130, 134; *Hammerstrom v. Troy Nat. Bank of Sioux City, Iowa,* 81 F. 2d 628, 636, certiorari denied 299 U. S. 546. See also, *First National Bank of Greeley v. Board of County Commissioners of the County of Weld,* 264 U. S. 450, 454-456; *Gorham Manufacturing Co. v. State Tax Commission,* 266 U. S. 265, 269-270; *McGregor v. Hogan,* 263 U. S. 234, 238; *Stanley v. Board of Supervisors,* 121 U. S. 535, 552.

1. Petitioner's Property Was Not Under Federal Law Exempt From Taxation, and Petitioner Was Thus Not Excused From Seeking Administrative Relief.

Contrary to the uniform decisions of this Court cited above, petitioner contends that application of the doctrine of exhaustion of remedies herein infringed upon Federally assured rights. Petitioner notices the settled state-law exception, recognized in the decision below (R. 124) that such doctrine is inapplicable where the property assessed is either "exempt" or "outside the jurisdiction" of the County, and asserts that under R. S. 5219 and the Equal Protection clause, its vault doors and counterlines were necessarily "exempt" and "outside the jurisdiction" as a matter of federal law.

The right of equal tax treatment may require invalidation of State tax action to the extent that it does not conform thereto; but Federal invalidity of a tax because of discriminatory treatment does not "exempt" the taxpayer or his property from, nor destroy the State's inherent power (*McCulloch v. Maryland,* 4 Wheat. [17 U. S.] 316, 436) to impose, nondiscriminatory taxes upon real property. Indeed, petitioner concedes that jurisdiction to reassess would exist with respect to the valid portion of any taxes on the subject property ordered refunded herein. (Pet., p. 10; California Revenue & Taxation Code, secs. 4946-4948.) Cases upon which petitioner relies, *Hillsborough Township v. Cromwell,* 326 U. S. 620, 623; *Sioux City Bridge Co. v. Dakota County,* 260 U. S. 441, 446; and *Iowa-Des*

Moines National Bank v. Bennett, 284 U. S. 239, 247, do not support its claim of exemption. Those cases hold that tax discrimination forbidden by R. S. 5219 or the Equal Protection Clause may be cured either by lowering the plaintiff's tax to the level of the most favored taxpayer, or by raising the taxes of the favored taxpayers to the same level as his, provided plaintiff is not limited to initiating the latter remedy.

The cited cases, and other decisions of this Court (*Tradesmen's Natl. Bank v. Okla. Tax Commission,* 309 U. S. 560; *N. Y. ex rel. Amoskeag Sav. Bank v. Purdy,* 231 U S. 373; *Peo. Natl. Bank of Lynchburg v. Marye,* 191 U. S. 272; *Stanley v Board of Supervisors,* 121 U S. 535) have established the uniform settled principle that irregular or illegal taxing procedures do not make taxable property "exempt" from taxation; and that such taxes are not "void," but are merely voidable to the extent that they are illegal. Such cases are in sharp contrast with, and must be distinguished from, cases like *Owensboro National Bank v. Owensboro,* 173 U. S. 664, and *First National Bank of Gulfport v. Adams,* 258 U. S. 362, in which the subject taxes were wholly unauthorized, and hence voidable to their full extent. In such circumstances only may the subject property be said to be "exempt" from the tax involved. *Montana National Bank v. Yellowstone County,* 276 U. S. 499, cited by petitioner, is merely an illustration of the latter rule.

2. Petitioner's Property Was Not Under State Law Exempt From Taxation, and Petitioner Was Thus Not Excused From Seeking Administrative Relief.

The distinction observed in the Federal cases is recognized and followed by the California decisions. "Exempt" property within the meaning of the exception to the general rule of exhaustion of remedies before the Board of Equalization, is property which "is not taxable at all" or which is "not liable to assessment at all." *Brenner v. Los Angeles,* 160 Cal. 72, 76, 116 Pac. 397 (1911). See also, *Kern River Co. v. County of Los Angeles,* 164 Cal. 751, 755, 130 Pac. 714 (1913). Cf. *Los Angeles Shipbuilding & Dry Dock Corp. v. Los Angeles County,* 22 Cal. App. 2d 418, 422, 71 P. 2d 282 (1937). Since petitioner's fixtures were improvements and real property under settled California law (California Revenue & Taxation Code, secs. 104-105, derived from California Political Code, sec. 3617 (enacted 1872); *San Diego Trust & Sav. Bank v. County of San Diego,* 16 Cal. 2d 142, 105 P. 2d 94 (1940), certiorari denied 312 U. S. 679; *Trabue Pittman Corp. v. County of Los Angeles,* 29 Cal. 2d 385, 175 P. 2d 512 (1947)) and were admittedly located within the county, city and district in which they were assessed (R. 1, 2), they were clearly taxable by respondents herein. (R. 125.)

Manifestly, if petitioner's fixtures had been misclassified like other fixtures, they would not thereby have become "exempt" in the sense of lack of power to tax, but would merely have been accorded what the California Supreme Court termed an "unwarranted

exemption" (R. 133) in the sense of a gratuitous escape from taxes to which they were legally subject. (R. 125.) Such interpretation is conclusive on this Court and no more raises any Federal question than did the decision involved in *First National Bank of Greeley v. Board of County Commissioners of the County of Weld,* 264 U. S. 450, 453, where like failure to comply with a state requirement to exhaust available remedies was held to preclude judicial consideration of a claim of tax invalidity based, as here, upon R. S. 5219 and the Due Process and Equal Protection Clauses. Squarely in point, also, is the statement of Mr. Justice Fuller in *Northern Pacific Railroad Co. v. Patterson,* 154 U. S. 130, 133-134:

> "It is contended, on the other hand, that where taxes are levied upon property which is by law exempt from taxation, the statutory remedy by application to a board of review is only cumulative and that the taxpayer may at his election seek his remedy by injunction in the first instance. But it was for the supreme court of Montana to determine whether the statute was exclusive and whether plaintiff came within its terms or not, and its action in that regard raises no Federal question for our consideration."

If petitioner misunderstood the California law and mistakenly considered its fixtures to be exempt personal property and considered that resort to the Board was thus not prerequisite to judicial relief, petitioner was not thereby excused from making timely applica-

tion to the Board. As Mr. Justice Brandeis observed in *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 50-51,

> " . . . The long settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted . . . has been repeatedly acted on in cases where, as here, the contention is made that the administrative body lacked power over the subject matter."

See also *St. Louis-San Francisco Ry. Co. v. Alabama Public Serv. Com.*, 279 U. S. 560, 562-563; *Federal Trade Commission v. Claire Furnace Co.*, 274 U. S. 160, 174; *Dalton Adding Mach. v. State Corp. Com.*, 236 U. S. 699, 701.

3. Application to the Board of Equalization Was Not Excused Upon the Ground of Futility.

Petitioner seeks reversal of the California Court on the theory that denial of relief by the Board of Equalization in the twenty-three companion cases is a conclusive showing that such application would have been futile. The argument quite misconceives the decisions in *Montana National Bank v. Yellowstone County*, 276 U. S. 499; *Hills v. Exchange Bank*, 105 U. S. 319, and *Whitbeck v. Mercantile Bank*, 127 U. S. 193, upon which it relies. Those cases are distinguishable, in that therein application to a local board was rendered legally futile by prior judicial decisions or exist-

ing statute law declaring such board to be wanting in jurisdiction to consider such applications. The distinction lies in the difference between futility in the legal sense of lack of power to grant relief, and futility in the practical sense of mere anticipated failure to obtain redress from a tribunal with power to grant it. In the former case, application for relief is excused. *Brinkerhoff-Faris Trust & Sav. Co. v. Hill,* 281 U. S. 673; *Bernstein v. Smutz,* 83 Cal. App. 2d 108, 114-115, 188 P. 2d 48; *McPheeters v. Medical Examiners,* 82 Cal. App. 2d 709, 717, 187 P. 2d 116. In the latter case it is not excused. *U. S. v. Felt & Tarrant Mfg. Co.,* 283 U. S. 269, 272-273; *Highland Farms Dairy v. Agnew,* 300 U. S. 608, 616-617; *Lehon v. Atlanta,* 242 U. S. 53, 56; *Abelleira v. District Court of Appeal,* 17 Cal. 2d 280, 300-301, 109 P. 2d 942, 132 A. L. R. 715; *Red River Broadcasting Co. v. Federal Communications Com.,* **98 F. 2d 282, 288.**

Petitioner overlooks the principle long recognized by this Court (*Stanley v. Board of Supervisors,* 121 U. S. 535) that the Board of Equalization sits as a quasi-judicial body. *McClelland v. Board of Supervisors,* 30 Cal. 2d 124, 129, 180 P. 2d 676; *Universal Consolidated Oil Co. v. Byram,* 25 Cal. 2d 353, 356-357, 153 P. 2d 746. As such, the Board was the tribunal having exclusive original jurisdiction over all questions of fact bearing on valuation, and the Superior Court had no power to initially award relief. As Mr. Justice Field said in *Stanley v. Board of Supervisors,* 121 U. S. 535, 549:

"Overvaluation of property is not a ground of action at law for the excess of taxes paid beyond what should have been levied upon a just valuation. The courts cannot, in such cases, take upon themselves the functions of a revising or equalizing board."

4. Petitioner Did Not Apply for Relief to the Board of Equalization.

Asserted joinder by petitioner in the 1941 application to the Board filed by its landlords (R. 109, 121) was not compliance with the rule. Such application did not seek relief for petitioner or with respect to the subject property (R. 78, 109) and thus fails to satisfy the jurisdictional essential of a timely verified written application showing the facts claimed to require equalization as to the property herein involved. California Revenue & Taxation Code, sec. 1607; *Rittersbacher v. Board of Supervisors,* 220 Cal. 535, 32 P. 2d 185; *De Mille v. Los Angeles County,* 25 Cal. App. 2d 506, 77 P. 2d 905. Cf. *Merchants Trust Co. v. Hopkins,* 103 Cal. App. 473, 477, 284 Pac. 1072. Petitioner's contention is basically the untenable one that it may be excused for failure to sue within the statute of limitations because others did timely sue in cases involving the same legal issues.

5. California Procedure Does Not Require the Injured Taxpayer to Seek Relief by Upward Revision of the Taxes of Others.

Contrary to petitioner's contention, California equalization procedure does not burden an aggrieved taxpayer with the task of seeking upward revision of the taxes of other discriminatorily favored taxpayers. The California Revenue and Taxation Code contemplates equalization of assessments *either* by reducing the applicant's assessment, or by increasing the other assessments, but leaves the choice between the alternative remedies to the County Board of Equalization. (California Revenue and Taxation Code, secs. 1605, 1611.) As the opinion below indicates, equalization could have been achieved by the Board by entering the misclassified fixtures of others as improvements on the assessment roll, thereby increasing such other improvement assessments. (R. 126.) Also, as shown by the decisions in the twenty-three companion cases, equalization could have been achieved by reducing petitioner's building assessment by an amount equal to the value of the fixtures discriminatorily included. (R. 139, 140.)

Thus, California equalization procedure, unlike that involved in the cases which petitioner cites (*Hillsborough Township v. Cromwell,* 326 U. S. 620, 623; *Sioux City Bridge Co. v. Dakota County,* 260 U. S. 441, 445-447; *Iowa-Des Moines National Bank v. Bennett,* 284 U. S. 239, 247), requires the aggrieved taxpayer only to

seek equalization of his own assessment in quasi judicial proceedings before the Board of Equalization. The choice between two available procedures for achieving equalization is for the Board. If it does not revise upward the assessments of the discriminatorily favored taxpayers, by law it must reduce the assessments of the complainant. Any practical impossibility of securing relief due to the onerous burden thereof on the injured taxpayer, which is the basis of the rule invoked by petitioner (see *Sioux City Bridge Co. v. Dakota County,* 260 U. S. 441, 446) is wholly absent here, and no Federal question is raised.

II.

Petitioner's Claim of Denial of Due Process in Application To It of The Ground of Decision Below Was Not Timely Raised.

Petitioner concedes that the petition for rehearing was the first place petitioner complained that barring relief for failure to apply to the Board of Equalization constituted a denial of due process of law. (R. 166; Pet. p. 17.) Since rehearing was denied without opinion and by memorandum order only (R. 177), it cannot be assumed that the State court actually considered and passed on the point. *McCorquodale v. Texas,* 211 U. S. 432, 437; *Forbes v. State Council of Virginia,* 216 U. S. 396, 399; *Consolidated Turnpike Co. v. Norfolk & O. V. R. Co.,* 228 U. S. 326, 333-334. Accordingly, the claimed Federal due process question was raised too

late to permit review by this Court (*Herndon v. Georgia,* 295 U. S. 441, 443, and cases cited) unless petitioner can show that the decision herein caused "surprise," and that its petition for rehearing was thus the earliest opportunity at which the point could have been urged. *Brinkerhoff-Faris Trust & Sav. Co. v. Hill,* 281 U. S. 673, 678.

1. The State Rule Is Well-settled and Should Have Been Anticipated.

The ultimate question, with reference to timeliness, is "whether the ruling here assailed should have been anticipated." *Herndon v. Georgia,* 295 U. S. 441, 444. That the ruling should, indeed, have been anticipated is shown by the fact that the requirement to apply to the Board of Equalization for reduction of an overvalued assessment of taxable property has been in California law continuously since at least 1872, when the Political Code was first enacted (California Political Code sec. 3674, now California Revenue & Taxation Code, sec. 1607), and in case law since at least 1861, when *Fall v. Mayor of Marysville,* 19 Cal. 391 (reaffirmed in *Henne v. County of Los Angeles,* 129 Cal. 297, 61 Pac. 1081 (1900)) unequivocally declared such application necessary. See also, *California Domestic Water Co. v. Los Angeles,* 10 Cal. App. 185, 189, 101 Pac. 547 (1909). Although *Brenner v. City of Los Angeles,* 160 Cal. 72, 76, 116 Pac. 397, 399 (1911) pointed out an exception to the rule of the *Henne* case, namely, that prior appli-

cation to the Board was unnecessary in cases of assessment of non-taxable property, the basic requirement was expressly held applicable to discrimination cases in *Lace v. City of San Diego,* 198 Cal. 405, 406, 245 Pac. 196 (1926) in which the *Brenner* case was expressly distinguished. See also *Mahoney v. City of San Diego,* 198 Cal. 388, 245 Pac. 189 (1926); *Associated Oil Co. v. County of Orange,* 4 Cal. App. 2d 5, 8-11, 40 P. 2d 887 (1935); and *Dawson v. County of Los Angeles,* 15 Cal. 2d 77, 81, 98 P. 2d 495 (1940).

In view of these decisions, petitioner's contention that the ruling below could not have been anticipated amounts to a confession of error, that petitioner believed its fixtures to be personal property and thus tax-exempt property within the doctrine of *Brenner v. City of Los Angeles,* 160 Cal. 72, 116 Pac. 397. By California statute, however, fixtures have been classified as real property for tax purposes since at least 1872. (California Revenue & Taxation Code, secs. 104-105, derived from former California Political Code, sec. 3617, enacted 1872.) Any question on the point was conclusively settled by decision prior to the tax year in question (*San Diego Trust & Sav. Bank v. County of San Diego,* 16 Cal. 2d 142, 105 P. 2d 94 (1940), cert. den. 312 U. S. 679) and prior to the appeal herein (*Trabue Pittman Corp. v. Los Angeles,* 29 Cal. 2d 385, 175 P. 2d 512 (1946)). Petitioner clearly was bound to anticipate application of the state's well-settled procedural rule, and to present any Federally grounded ob-

jection thereto prior to the petition for rehearing *Herndon v. Georgia,* 295 U. S. 441, 443-444; *American Surety Co. v. Baldwin,* 287 U. S. 156, 162. Moreover, since petitioner's theory that its fixtures were exempt is not supported by any decided cases, petitioner "had to assume the risk that the ultimate interpretation by the highest court might differ from its own" (*Brinkerhoff-Faris Trust Co. v. Hill,* 281 U. S. 673, 682, footnote 9) and present its arguments thereon seasonably.

2. The State Rule Was in Fact Anticipated by Petitioner.

Petitioner not only should have anticipated the California rule, but petitioner's claim of "surprise" is squarely refuted by the record, which discloses the following facts demonstrating that applicability of the rule of exhaustion of remedies was in fact anticipated by petitioner:

(a) In 1941, counsel for petitioner bank presented other Board applications filed by its landlords with respect to similarly overvalued buildings other than the subject building. (R. 109, 121.)

(b) Petitioner filed Board applications in companion cases for years 1942-1946. (R. 128.)

(c) The rule of the California cases requiring application to the Board of Equalization under these circumstances was argued in the trial court. (R. 75-104.)

(d) The same rule was again argued in the Supreme Court of California. (Appellants' Opening Brief in California Supreme Court,* pp. 33-43.)

Factually, therefore, the instant case is entirely distinguishable from *Brinkerhoff-Faris Trust & Sav. Co. v. Hill,* 281 U. S. 673, wherein "the possibility of relief before the tax commissioner was not suggested by anyone in the entire litigation until the supreme court filed its opinion." Petitioner's failure to urge denial of Due Process prior to its petition for rehearing precludes review of that question by this court. *Herndon v. Georgia,* 295 U. S. 441, 443-444; *American Surety Co. v. Baldwin,* 287 U. S. 156, 162.

III.

No Substantial Federal Question Is Presented By The Petitioner

As we have previously shown, the only possible Federal question herein is petitioner's claimed denial of due process of law. This contention, we submit, is too slight and frivolous to warrant judicial consideration, and cannot be regarded as substantial. *Equitable Life Asso. Soc. v. Brown,* 187 U. S. 308; *Zucht v. King,* 260 U. S. 174; 20 Boston Univ. L. Rev. 501 (1940). As already demonstrated, the decision below constitutes mere application of a long-established and well-settled

*Copies of this brief have been filed with the Clerk of this Court.

procedural rule of law of California. Contrary to petitioner's assertion, the Court below did not overrule or modify the case of *Brenner v. City of Los Angeles,* 160 Cal. 72, 116 Pac. 397. On the contrary, the Court cited and relied upon the *Brenner* case as establishing the "exception . . . made when the attempted assessment is a nullity because the property is either tax-exempt or outside the jurisdiction" (R. 124), but held that such exception did not apply herein since the property was both taxable and within the jurisdiction. In *Brinkerhoff-Faris Trust & Sav. Co. v. Hill,* 281 U. S. 673, controlling case law denied jurisdiction to the tax commission and such commission persistently refused to entertain applications for relief. The California decisions on the other hand squarely establish that proceedings before the Board of Equalization were at all times available to petitioner, and, as shown in the twenty-three companion cases, such filed applications were in fact considered by that body. (R. 128.) The claim of denial of due process is manifestly insubstantial.

CONCLUSION

WHEREFORE, it is submitted that the writ of certiorari prayed for should be denied.

Respectfully submitted,

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